

**UNITED STATES DISTRICT COURT  
IN THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

THERMOLIFE INTERNATIONAL, LLC,

Plaintiff,

v.

HUMAN POWER OF N COMPANY,

Defendant.

C.A. No. 6:21-CV-0144

**JURY TRIAL DEMANDED**

**SCHEDULING ORDER**

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court ORDERS that the following schedule will govern deadlines up to and including the trial of this matter:

<b>Deadline</b>	<b>Item</b>
June 23, 2021	Plaintiff serves preliminary <sup>1</sup> infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (i.e. the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
September 3, 2021	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant

<sup>1</sup> The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

	shall also produce (1) all prior art referenced in the invalidity contentions, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).
September 9, 2021	Parties exchange claim terms for construction.
September 16, 2021	Parties exchange proposed claim constructions and extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall also provide a summary of the witness's expected testimony including the opinions to be expressed and a general description of the basis and reasons therefore. A failure to summarize the potential expert testimony in a good faith, informative fashion may result in the exclusion of the proffered testimony. With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
September 23, 2021	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
September 30, 2021	Defendant files Opening claim construction briefs, including any arguments that any claim terms are indefinite.
October 21, 2021	Plaintiff files Responsive claim construction briefs.
November 4, 2021	Defendant files Reply claim construction briefs.
November 18, 2021	Plaintiff files Sur-Reply claim construction brief.
November 23, 2021	Parties submit Joint Claim Construction Statement. In addition to filing, the parties shall jointly submit, via USB drive, cloud-storage, or email to the law clerk pdf versions of all as-filed briefing and exhibits. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.
November 23, 2021	Parties submit optional technical tutorials. The parties shall also jointly submit, via USB drive, Box (not another cloud storage), or email to the law clerk, pdf versions of all as-filed briefing and exhibits.

<b>December 2, 2021</b>	Markman Hearing, 9:30 a.m.
December 3, 2021	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
January 13, 2022	Deadline to add parties.
January 27, 2022	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.
March 3, 2022	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims.
April 1, 2022	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
April 28, 2022	Close of Fact Discovery.
May 12, 2022	Opening Expert Reports.
June 9, 2022	Rebuttal Expert Reports.
June 30, 2022	Close of Expert Discovery.
July 7, 2022	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
July 12, 2022	Dispositive motion deadline and <i>Daubert</i> motion deadline.
July 26, 2022	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
August 9, 2022	Serve objections to pretrial disclosures/rebuttal disclosures.

August 18, 2022	Serve objections to rebuttal disclosures and file Motions <i>in limine</i> .
August 25, 2022	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i>
August 30, 2022	Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
3 business days before Final Pretrial Conference.	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
September 12, 2022	Final Pretrial Conference. The Court expects to set the Final Pretrial Conference within 2-4 weeks of the trial date.
<b>October 3, 2022</b>	Jury Selection/Trial. The Court expects to set this date at the conclusion of the <i>Markman</i> Hearing.

SIGNED this 31st day of August, 2021.



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 ALAN D ALBRIGHT  
 UNITED STATES DISTRICT JUDGE